APPENDIX C

Labor Management Relations Act, 1947, Section 2 (2) [29 USCA 152 (2)]:

The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act . . .

Labor Management Relations Act, 1947, Section 2(3) [29 USCA 152(3)]:

. . . any employee, and shall not be limited to the employees of a particular employer, . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act . . .

Labor Management Relations Act, 1947, Section 10(c) [29 USCA 160(c)].

Prevention of unfair labor practices.

(c) . . . the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: . . .

Labor Management Relations Act, 1947, Section 13 (29 USCA 163):

Right to strike preserved

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interefere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Labor Management Relations Act, 1947, Section 303 [29 USCA 187]: *Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in, the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this

subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefore in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

. . .

Labor Management Relations Act, 1947, as Amended September 14, 1959, Section 8(b)(4)(i) [29 USCA 158(b)(4)(i)]:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; . . ."

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28 USCA 1332 reads, in part, as follows:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy

exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

"(1) citizens of different States;

"(2) citizens of a State, and foreign states or citizens or subjects thereof; and

"(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

". . . . . ."

Federal Rules of Civil Procedure:
"Rule 17. Parties Plaintiff and Defendant; Capacity

". . . . . .

"(b) *Capacity to Sue or Be Sued.* The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantial right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., §§ 754 and 959(a). As amended Dec. 27, 1946, and Dec. 29, 1948, effective Oct. 20, 1949."

Section 12 of H. R. 3020 as Found in Legislative History of the Labor Management Relations Act, Vol. 1, pp. 204-207:

"SEC. 12. (a) The following activities when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; or picketing an employer's place of business in numbers or in a manner otherwise than is reasonably required to give notice of the existence of a labor dispute at such place of business; or picketing or besetting the home of any individual in connection with any labor dispute.

"(2) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer.

"(3) Calling, authorizing, engaging in, or assisting—

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises;

"(B) any strike or other concerted interference with an employer's operations, an object of which is to compel an employer to accede to featherbedding practices;

"(C) any strike or other concerted interference with an employer's operation, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under section 9 as the representative of the employees, or (ii) to remedy practices for which an administrative remedy is available under this Act, or (iii) to compel an employer to violate

any law or any regulation, order, or direction issued pursuant to any law.

"(4) Any conspiracy, collusion, or common arrangements between competing employers to fix or agree to terms or proposed terms of employment of their employees, or to subject such terms or proposed terms of employment to common control or approval, not permitted as to their employees, or as to the representatives of their employees, with respect to the collective bargaining, concerted activities, or terms of collective bargains or arrangements of such employees.

"(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the cost of the suit, including a reasonable attorney's fee.

"(c) No provision of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.

"(d) A person who is found to have engaged in any activity herein defined as an unlawful concerted activity shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice under section 8(b) or 8(c).

"(e) Except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or to engage in other lawful concerted activities. No provision of this Act, and no order of any court issued hereunder, shall be construed to require

any individual to perform labor or service without his consent."

1957 Annual Report, National Labor Relations Board, p. 98:

"In the view of the majority, section 8(b)(4) is violated only by inducement of strike action by employees, as defined in section 2(3), of an employer as defined in section 2(2). These definitions, according to the majority, are controlling because all section 2 definitions are expressly made to apply generally 'when used in this Act,' without exception. Congress' intent being thus manifest, the majority of the Board held that the use of the phrase 'any *employer*' in section 8(b)(4) could be given no meaning other than 'any employer' within the definition of section 2(2), and could not be taken to express an intent to extend the protection of section 8(b)(4) to employers outside the definition of section 2(2). The majority further pointed out that to interpret 'employees of any employer' as broadly as proposed would result in having the Board regulate labor relations of employers which Congress clearly meant to exclude from the act's operation . . . *the majority concluded that a 'secondary boycott by a railroad union or union of municipal employees does not violate section 8(b)(4)(A) even if such a boycott involves inducement of employees of neutral employers subject to the Act.'*"

Excerpts from Legislative History of the Labor Management Reporting and Disclosure Act of 1959, Vol. II:

Senator Curtis (p. 989):

"These loopholes which permit unions to instigate effective secondary boycotts should be closed, and the effect of the secondary boycott provisions of this bill will be to close them".

Senator McClellan (p. 1193):

"the Taft-Hartley law excludes railway . . . employees. They are not now covered by the law. The amendment would include those employees".

Representative Griffin (p. 1522):

"Since . . . railway labor . . . are not 'employees' within the meaning of the Act, unions may now without penalty induce them to engage in secondary boycotts. This bill corrects this by changing the word 'employees' in the phrase quoted above to 'any individual employed by any person.'"

LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 (U. S. GOVERNMENT PRINTING OFFICE, 1948).

Page 540:

"The conference agreement contains in the definition section a rule to be applied for the purpose of determining when a person is acting as an 'agent' of another person so as to make such other person responsible for his acts . . . (Reference to Norris-LaGuardia Act). Hence under the conference agreement as under the House bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the ordinary common law rules of agency (and only ordinary evidence will be required to establish the agent's authority)."

* * * * *

Senator Taft, in response to a question by Senator Pepper, said at page 1026:

"I admit it may be difficult to prove the responsibility of a Union. It is sometimes difficult to prove in the case of an employer. If the wife of a man who is working at a plant receives a lot of telephone messages, very

likely it cannot be proved that they came from the Union. There is no case then. There must be legal proof of agency in the case of Unions as in the case of corporations; but I do not think there is anything in the fact that a Union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization. No, I think not."

* * * * *

Page 1204:

"Mr. Ferguson. Is the word 'agent' as used sufficiently broad to cover a fellow employee? Or does it mean an agent of the Labor Union?

"Mr. Smith. I do not know how it would be interpreted, but my judgment is that it would be construed to mean an agent of the labor Union who had been appointed to solicit membership.

"Mr. Ferguson. It would not apply to a fellow employee?

"Mr. Smith. I would not think so at all.

"Mr. Ferguson. I think the Legislative History should make it clear that it is not the intent of the proposers of the amendment that 'agent' should cover every employee.

"Mr. Smith. I think the suggestion is entirely correct. But perhaps the Senator from Ohio would comment on that.

* * * * *

"Mr. Taft. I think the word 'agent' used here, as used in the contract section, and as used in other places in the bill, means an agent under the ordinary rules of agency, an agent of the Labor Union, the organization as such. The fact that a man was a member of a Labor Union in my opinion would be no evidence whatever to show that he was an agent.

"Mr. Ferguson. I am glad to have that explanation in the record to make the history of it very clear, particularly as to the word 'agent' as used in the bill."

* * * * *

Page 1537:

"Senator Taft. Under the conference agreement, as under the House Bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the common law rules of agency and the ordinary evidence required to establish such relationship."

On the floor of the Senate, Senator Taft was requested to include in the record certain statements made by the managers on the part of the House in returning the conference report, among them (as reported at page 1617) the following is found in the analysis of the bill, after referring to the definition of "agent" and the Norris-LaGuardia Act:

"Hence, under the conference agreement, as under the House bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the ordinary common law rules of agency. (And only ordinary evidence will be required to establish the agent's authority)."

* * * * *

Pages 1626-7:

"Mr. Taft. . . . . .

"The President says that a union will be liable if any of its members engaged in an unauthorized wildcat strike. This is simply not so.

". . . . . .

"The President says the law would expose unions to suits for acts of violence, wildcat strikes, and other actions, none of which were authorized or ratified by them. This is not so. We have simply provided

that unions are subject to the same general laws of agency as any other corporation or citizen in determining their liability for the acts of the agents."

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE:

"RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

"(a) *Special Verdicts.* The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

". . . . . "

APPENDIX D

INSTRUCTION NO. 2 OFFERED BY DEFENDANT

"The Court instructs you that the law regards the United Mine Workers of America as an entity separate and apart from its District 30, and neither District 30 nor any officer, field representative or other employee had any general power or authority to act for or bind the United Mine Workers of America in calling, promoting, participating in, ratifying, encouraging or adopting a strike or in picketing activity in connection therewith.

Likewise, the United Mine Workers of America is regarded in law as an entity separate and apart from any local union affiliated with it. The members and officers of the local union were not agents of the United Mine Workers of America merely by reason of their membership or by reason of the fact that they held office in a local union.

685 No wrongful act, if any, which a member or officer of the local union, or any officer or field representative or other employee of District 30 may allegedly have done can impose any liability in this case on the United Mine Workers of America, unless [illegible]intiff establish by clear evidence that the person or persons performing such alleged act or acts, if any, acted as agent or agents of the United Mine Workers of America while acting within the scope of the employment or authority"

(The Court declined to give the above instruction.)

INSTRUCTION NO. 3 OFFERED BY DEFENDANT

Plaintiff alleges that this Court has jurisdiction in the instant action under Section 303 of the Labor Management Relations Act, 1947. In order for the labor union involved in this case to violate those provisions, there first must be a labor dispute between the labor union and an employer called a primary employer, and the labor union must have

undertaken to win that labor dispute by bringing pressure upon, or coercing, the primary employer by inducing em-
ployees of a third party, called a neutral employer,
686 with whom it has no labor dispute, to engage in a
strike or concerted refusal to handle the products of the primary employer, and, secondly, the Union must have for its object one of the matters stated below.

Therefore, before you may find in plaintiff's favor in this case, the plaintiff coal company must show, by clear proof, that the United Mine Workers of America, acting by and through its agents, had a labor dispute with plaintiff as a primary employer and that it induced or encouraged employees of other coal producers or persons to engage in a strike or a concerted refusal to handle plaintiff's coal; but even if you so find, still you may not find the defendant Union guilty of violating the provisions of Section 303 unless you further find, by clear proof, that the Union's conduct had for its object forcing or requiring plaintiff to recognize or bargain with the defendant Union as the representative of the plaintiff's employees, or to force such other coal producers and persons to quit doing business with plaintiff.

Or the jury may find in plaintiff's favor in this case if
the plaintiff coal company shows, by clear proof, that
687 the United Mine Workers of America, acting by and
through its agents, had a labor dispute with some coal operator other than plaintiff, as a primary employer, and induced or encouraged plaintiff's employees to engage in a strike or refusal to handle the coal of such other coal operator, and if the coal company further shows, by clear proof, that the Union's conduct had for its object forcing or requiring plaintiff, as a neutral employer, to quit doing business with such other coal operator or person, or forcing or requiring such other coal operator or person to recognize or bargain with the defendant Union as the representative of that employer's employees; but, unless you believe from the evidence in this case that the Union's

conduct had such an objective, then you must find for the United Mine Workers of America."

(The Court declined to give the above instruction.)

INSTRUCTION NO. 4 OFFERED BY DEFENDANT

"The right of employees to organize and to form, join and assist a labor union, to bargain collectively through representatives of their own choosing, to strike and
688 picket and engage in other concerted activities for the purpose of mutual aid and protection are fundamental rights recognized in the law of the land.

In the instant case, District 30 had the right to picket the mines and tipple of the plaintiff for the purpose of organizing plaintiff's employees and inducing plaintiff to recognize the Union as the bargaining representative of its employees, and to induce and encourage plaintiff's employees to strike and cease producing or handling plaintiff's coal for such purposes, even though these acts interfered with plaintiff's operations and business. And if, from a preponderance of the evidence in this case, you believe that District 30's activities were for such purposes, or either of them, then you will find for the defendant, United Mine Workers of America."

(The Court declined to give the above instruction as a whole, but stated that a portion thereof would be given in substance.)

INSTRUCTION NO. 5 OFFERED BY DEFENDANT

"The Court instructs you that in an action brought under Section 303 of the Labor Management Relations Act,
689 in determining whether there has been any violation thereof, evidence of any violence, if any, is not material and even though you may believe from a preponderance of the evidence in this case that acts of violence were committed, and, further, that such violence was committed by agents of the defendant, United Mine Workers of Amer-

ica, still you may not find United Mine Workers of America liable or guilty of unlawful conduct under such law."

(The Court declined to give the above instruction.)

INSTRUCTION NO. 6 OFFERED BY DEFENDANT

"The Court instructs the jury that even if you believe from the evidence that acts of harassment and threats of violence and violence were committed by agents of the defendant, still you may not hold the United Mine Workers of America responsible or liable for such conduct unless you believe upon clear proof that the United Mine Workers of America actually participated in, or actually authorized such acts, or ratified them after actual knowledge thereof."

(The Court declined to give the above instruction.)

INSTRUCTION NO. 7 OFFERED BY DEFENDANT

"The Court instructs the jury that even though
690 you may believe from the evidence in this case that wrongful conduct occurred at mines and properties of persons and companies other than those of the plaintiff, still you may not find defendant, United Mine Workers of America, guilty in this case unless you further believe, from the evidence, that wrongful conduct also was committed on the premises of, and to, the plaintiff and to plaintiff's employees and that such wrongful conduct was committed by agents of the United Mine Workers of America acting within the scope of their authority."

(The Court declined to give the above instruction as a whole, but stated that it would be given in substance, other than the limitation in the phrase "committed on the premises of the plaintiff.")

INSTRUCTION NO. 8 OFFERED BY DEFENDANT

"The Court instructs the jury that should it believe plaintiff is entitled to an award of damages, you must limit

your assessment of damages to injuries sustained by
691 the plaintiff company and you shall not consider or include any injury to other persons or companies and to the property of other persons or companies."

(The Court sustained the motion to give the above instruction.)

Mr. Combs: For the record, Your Honor, we object to the Interrogatory No. 1 to be answered by the Jury and say for reasons that it does not correctly state the law concerning the violation of the Statute or the evidence offered by the plaintiffs. We think that the Court should have given Instruction No. 3 offered by the defendant as a correct statement of the law.

We further object to the interrogatories to the jury dealing with the question of measure of damages as not correctly stating the law concerning damages under the evidence adduced by the plaintiffs, and make a general objection to the interrogatories.

• • • • • • • • • • •

692 INSTRUCTIONS TO THE JURY

The Court:

Ladies and Gentlemen of the Jury: I feel like I hardly know where to begin in discussing with you this case and in discussing your duties in respect to this case. But I think the first thing that we ought to undertake is a clear understanding of what the parties have fallen out about and what they are trying to accomplish, and a clear understanding of the issues that you are to decide.

A Jury performs a most important function when two people fall out and have a dispute over what the truth is, what the facts are. One testifies one way, the other testifies another. Our system is simply to submit the issue under the evidence that is presented to a qualified group of twelve citizens of our country. There is where your province is. You are to determine, as between these conflicting conten-

tions that have been presented in this case, just what the truth is.

Now it is claimed by the plaintiffs in this case that the defendant violated the law of the United States in that, for the purpose and with the object of forcing these plaintiffs to join the union, the United Mine Workers, the defendant did induce or did encourage the employees of coal-producing companies, who were engaged in hauling
693 or supplying coal to the tipple operated by the plaintiff, Sunfire Coal Company, to engage in a concerted refusal—that is, they induced these people or encouraged these people to engage in a concerted refusal to transfer coal from the mines of their employers to the tipple of the plaintiffs. That's what they charge first, that they undertook to interfere with their supply of coal by inducing the truckers upon whom they depend to get the coal and to carry on their business, and that in that respect they violated the law of the United States.

Further, it is charged, and the question that you are to decide—these people deny that they had any such purpose; that is, the defendants deny that there was any such thing involved in this strike and in this picketing of the plaintiffs' property.

The plaintiffs further say that they not only undertook to persuade or to encourage the truckers to quit supplying them, but that for the same purpose, forcing them to sign this contract, this contract that they felt and told the defendants in their meeting that they couldn't live under, that the small coal operators who sold them the coal couldn't live under it; that it required these defendants to buy coal only from operators who operated in accordance with the terms of this contract; that they couldn't pay forty
694 cents a ton to the Welfare Fund in addition to their other expenses.

That is the problem that we are to determine. I started to say that the second object and purpose was to take the

employees away from the plaintiffs that were there engaged in operating their business, for the purpose of compelling, inducing and coercing the plaintiffs to sign the contract.

I'm not going to take time to discuss whether this case ought to be decided on sympathy. I heard a very interesting appeal by the attorney for the union for your sympathy for the union. I'm not going to take any time in discussing that, because everybody recognizes that it is not a legitimate argument when the issues are presented to the Jury.

I am going to submit these issues that are involved here to you in as simple interrogatories as I can. I'm going to submit it on interrogatories that you can read and understand and answer "yes" or "no". I want you to understand these interrogatories because that is important in order that you perform the duties that rest upon you. I'm not going to make an address on the subject of the labor laws, or on the subject of the right or justice of some of the laws. That is not the province of the Court. We are undertaking to deal with one single case, and
695 that's this case.

Let's see what the first question is that is presented to you for your determination:

"Do you find from the evidence that in March 1959, and thereafter during the period of the strike referred to in the testimony, the Defendant, United Mine Workers of America, through its officers, agents, representatives or members, did (1), for the purpose and with the object of forcing or requiring the Plaintiffs to join the Union, United Mine Workers of America, induce or encourage employees of coal producing companies who were engaged in hauling or supplying coal to the tipple operated by Plaintiffs, Sunfire Coal Company and Ashlo Coal Company, to engage in a concerted refusal to transfer coal from the mines of their employers to the tipple of the Plaintiffs . . . . . ."

You have heard the facts in regard to what they did and what they undertook to do. I'm not going to review those

facts. They have been gone over and over and over by the attorneys for the parties. They have reviewed for you the fact that for some reason the defendant, by its agents and servants—because the officers of the union and the
696 officers of the district and the members of the union and the members of the district are largely identical as far as rights and powers and duties are concerned, and as far as representation of the union is concerned. But what happened? You have heard the testimony as to the —Well, I say I'm not going to review it. I can't hardly discuss the question without reviewing it to some extent, because it is undisputed that some of the truckers were threatened. Well, I say it is undisputed; I guess it is disputed, but you heard how they were threatened, how they were cursed, how to drive in there one time they were obstructed by the scattering of roofing nails on the road. There was proof that one of these pickets came out when they were picking them up and trying to clear the road and said "Let those nails alone."

What was the object of all of this picketing? Was it to have a peaceful consideration of the merits of the contract and to induce somebody to conclude that it was the right thing to do, or was it to force somebody against their will and due to the fear of what might happen that they could get them to sign the contract and join the union? Was that the object and purpose of organizing a picket group of three or four hundred men to go to a place up here called Combs where there was a tipple operated by a few
697 employees? Mass picketing of three or four hundred men at one place. Some of them stayed night and day, fed by the officers that were in charge of them, the officers of District 30 of the defendant union. Not only fed but paid, vouchers issued for money to induce them to do these things. There is proof that the agents of the union, Mr. Bill Perkins, Mr. Matt Combs and some of the others were present when many of these things happened. You have heard the testimony; I need not go into it. You

have heard the testimony of the men who were actually working in the tipple and trying to carry on the best they could under all these circumstances—testify that three or four of the pickets came up there and pushed them or threatened to push them off the tipple, did make them quit, told them to get out of there, did stop the operation of the tipple.

Now the defendant says "You haven't proved that these men who did it were authorized to do it by the union." The union called this strike. The union organized the pickets. It was the union men that went there and sought to get these plaintiffs to sign the contract. It was the union who appeared at the meeting in Washington and heard the plea
for the small coal mines to have a different kind of
698 contract. Witnesses say that they didn't hear the
officers of the defendant say "If you want to stop the violence, sign the contract." Do you think they did say it? That's for you to decide. You heard the men who testified that that is what happened, and they asked and pled for them to give them some way by which this violence—what violence? According to the defendants there was not violence there. But they begged to have some indication given to stop this violence. What did they tell them? According to the witnesses that have been introduced by the plaintiffs, they said "If you want to stop the violence, sign this contract." Does that leave any doubt in your mind as to the reason for all this mass picketing, as to the reason of all this coming and going? Does it have any bearing upon what happened? Well, you have heard the testimony as to the circumstances bearing upon what took place in the way of injury to the plaintiffs' property. We are not dealing now with the question of measure of damages, but this interrogatory calls upon you to answer and say whether, as the direct and proximate result of this conduct, the plaintiffs suffered injury.

The law of the United States provides that—I'm not going to stop to read it all—that it is unlawful for any

labor organization in an industry affecting com-
699 merce—and there is no doubt about this industry being one that affects commerce; it is not disputed that its products in a large measure go into commerce between the states—it is unlawful for any labor organization to engage in—and this United Mine Workers is a labor organization, has its constitution, has its officers, has its right to own property, has its liability for its illegal conduct. So this law provides that it is unlawful for a labor organization to engage in or to induce the employees of any other employer to engage in or to strike or in a concerted refusal in the course of their employment to try to transport commodities or perform any services, the object thereof is forcing or requiring any employer or self-employed person to join any labor or employer organization. Well, it says it is unlawful. It says further: "Whoever shall be injured in his business or his property by reason of any violation of sub-section (a) may sue in any district court of the United States, subject to the limitations and provisions of Section 185 of this Title, without respect to the amount in controversy, or in any other court having jurisdiction, and shall recover the damages by him sustained and the costs of the suit." Under the limitations and provisons of Section 185, Paragraph E of which says

"For the purpose of this section in determining
700 whether any person is acting as an agent of another person so as to make such other person responsible for his acts—whether they are the agents of the defendant, United Mine Workers of America—the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

So you are called to answer whether or not these things took place as set out in the first interrogatory.

"And if you further believe that, by reason of and as the result of such conduct by the Defendant, its officers, agents, representatives and members, the Plaintiffs sustained damage to their business and property?"

You will answer "yes" or "no" as you find the facts to be. There is a line there for you to answer it. You will answer "yes" that they did or that they did not

"If your answer to Interrogatory No. 1 be "No", it will not be necessary for you to answer any of the remaining interrogatories; but if your answer to No. 1 be "Yes," you will proceed to answer the remaining Interrogatories as directed."

701 Interrogatory No. 2:

"Do you find from the evidence that, as the direct and proximate result of the acts and conduct of the Defendant, United Mine Workers of America, its officers, agents, representatives or members, as described in Interrogatory No. 1, the Plaintiff Ashlo Coal Company sustained damages in loss of profits which it would otherwise have made in its business?"

Did it damage Ashlo in the loss of profits in its business? You have heard the facts. Was it the direct and proximate result of this mass picketing, threats to the condition of affairs that prevailed, the ominous gathering of large bodies of men blocking highways, blocking entrances, scattering of nails upon the highway to keep them from operating, throwing rocks? There is proof that there was shooting, that there were explosions. Those things happened. For what purpose? How did it happen? What was the purpose of any of it? Do you find it was the purpose from all the circumstances are you able to determine from this evidence that the impairment of the business of Ashlo, by the destruction of the tipple and the equipment that Ashlo was using, interfered with the business of Ashlo and was
702 the result and for the purpose and the accomplishment of the purpose for which the United Mine Workers of America gathered their pickets?

If you answer that interrogatory "yes", you will answer the next interrogatory that follows, which deals with the

measure of damages. But if your answer is "no", then you will not answer Interrogatory No. 3. But in either event you will answer Interrogatory No. 4.

No. 3 is:

"What amount do you find from the evidence will fairly and reasonably compensate the Plaintiff Ashlo Coal Company for the loss of profits it is reasonably certain it would have made in the operation of its business under its lease contract with Sunfire Coal Company but for the acts and conduct of the Defendant, United Mine Workers of America, its officers, agents, representatives or members, as described in Interrogatory No. 1, not to exceed the sum of $23,555.40?"

That will present to you a problem of determining what they have lost, which the law says they are entitle . . o recover in damages. Have they been damaged? Has their business been destroyed? Would they have made any
703 profits? You have heard these people controvert the testimony that has been introduced here. It is for the Jury to resolve and determine what the facts are and what your reasonable conclusion is in that respect. You have had it argued back and forth by the attorneys sufficiently for me not to dwell upon it further. I'm going to leave that to you.

The next problem will be to deal with the question of Sunfire Coal Company property.

"Do you find from the evidence that, as the direct and proximate result of the acts and conduct of the Defendant, United Mine Workers of America, its officers, agents, representatives or members, the Plaintiff Sunfire Coal Company sustained damages to its coal tipple only to the extent that the tipple was susceptible of being repaired and restored to as good condition as it was before the damage, and sustained further damage by the loss of the rentals of its tipple during the period necessary for its repair and restoration?"

You will have to decide whether that happened and whether it is the necessary and proximate result of the conducts that are described in Interrogatory No. 1, and make up your mind whether you should answer it
704 "yes" or "no" after considering it in the light of the evidence that has been presented here. If your answer to No. 4 be "yes", you will proceed to answer No. 5; but if your answer to No. 4 be "no", you will not answer No. 5, but will proceed to answer No. 6.

No. 5 presents the question to be answered in the event you find that the tipple was susceptible of being repaired and restored to as good condition as existed before the damage occurred to it.

"What amount do you find from the evidence will fairly and reasonably compensate Plaintiff Sunfire Coal Company for the necessary expenses of repairing and restoring its tipple described in the testimony within a reasonable time after April 25, 1959, together with such loss of its rental value as Plaintiff Sunfire Coal Company sustained from April 25, 1959, until the expiration of a reasonable time necessary for the repair and restoration thereof, not to exceed the sum of $492,509.49, the amount claimed?"

No. 6 presents the other alternative if you find that it wasn't susceptible of being repaired within a reasonable time and at reasonable expense.

705 The interrogatory reads thus:

"If you find from the evidence that the tipple of the Plaintiff Sunfire Coal Company was, by reason of the acts and conduct of the Defendant, United Mine Workers of America, its officers, agents, representatives or members, as described in Interrogatory No. 1, and as the direct and proximate result thereof, damaged to such an extent that it was not susceptible of repair and restoration to the condition that it was before such damage, at reasonable expense, then you will state what amount represented the

fair and reasonable market value of the plaintiff's tipple at the time and place, when and where, it was so damaged, not to exceed the sum of $400,000?"

The reasonable and fair market price of the tipple is the amount that it would bring at a fair, voluntary sale; and a fair, voluntary sale is a sale at which the seller is willing to sell and the buyer is willing to buy, and the amount would represent the purchase price in negotiation between a willing buyer and seller for the property described.

Now there has been something said that I must comment upon briefly. There is no question but that the law recognizes the right, in the course of this important pro-
706 cedure that we refer to as "collective bargaining" between labor and employers—there is no question but that the law seeks by means of strikes and by means of picketing to promote fair collective bargaining. And strikes, the use of pickets, is a very important device for laborers to put forth their claims, or to express their grievances. And so long as those devices are utilized peaceably, they do serve a useful purpose. But whenever they become the vehicle of violence, a vehicle of force, a vehicle in which people are put on such pressure that they can't resist for fear—fear is a terrible thing—and when that happens, when they are used to such extent as that and that use is made under such facts and circumstances that these facts and circumstances demonstrate, a defendant is responsible for that use and the defendant is responsible for the damages that necessarily follow.

The burden of proof is upon the person that makes the charge—that is, upon these plaintiffs. They must establish the burden that they undertook to support by a fair preponderance of the evidence. You will have to determine as to whether they have done that. Preponderance of the evidence doesn't mean the greatest number of witnesses; it doesn't mean merely something that was most probable

It means that which the greatest weight of the evi-
707 dence and testimony supports. Sometimes the testi-
mony of one witness, by reason of the appearance of sincerity and truthfulness, will overcome the testimony of dozens of people who don't give such appearance of truth and sincerity.

You know, it's a human sort of problem. You have to decide that problem. I can't decide it for you. I can't say what you ought to do about it when the testimony is conflicting. But the burden, nevertheless, to establish a fact that is involved rests upon the person who makes the charge, and that is the plaintiff here.

You are to be the judge of the credibility of the witness, who is telling the truth and who isn't. It's an important and a terrific problem. I always feel sympathy for a Jury that has that sharp problem to deal with, but, nevertheless, we have found no better way of determining it than by the verdict of a competent Jury.

Now any comments that I have made upon the facts, if I have appeared to make any comments upon the facts, indicated any views as to how the facts should be determined, I want to assure you that you are not bound by it. You are not bound by anything I say along that line. You
are bound, as has already been said to you in the
708 arguments of the lawyers, by the law as I have given it to you. But as far as any comments I have made upon the facts, you may disregard them, pay no attention to my views, because your views and your conscience is what must determine the issues that are presented here.

There was some evidence that was produced here about similar occurrences in other parts of the territory. There is some evidence of court procedures that resulted in some body being imprisoned and fined. Those matters may be considered. They were introduced for your consideration, but they do not constitute direct proof; they do not constitute proof that is substantive in support of these claims.

They are worth considering if you think they are worth considering. They may be considered as bearing upon whether or not there was a common plan in regard to the operations of this strike and the operation of the pickets. You can't award any damages for any injury that was done to anybody except such as may have been done, if you find such was the case, to these plaintiffs.

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709 The following occurred at the bench out of the hearing of the Jury:

Mr. Combs: If the Court please, the defendant, by counsel, excepts to the charge given as follows:

The Instructions erroneously state the relationship between the defendant United Mine Workers and its District 30.

The Court erred in refusing to give the Instructions as tendered by the defendant in its Instructions Nos. 1 and 2.

The Court erred in its Instruction with reference to the secondary boycott provision, as sued upon in the complaint, in that the Court did not define boycott in the terms of the Statute, that is, Section 303 of the Labor-Management Relations Act of 1947; and the Court erred in refusing to give Instruction No. 3 with reference to the boycott as tendered by the defendant.

The Court erred in its charge with reference to his comments upon the payment of the forty cent royalty to the United Mine Workers of America Welfare and Retirement Plan, in that the evidence in the record here shows that these companies, the Sunfire Coal Company and Ashlo
710 Coal Company, were non-producing companies, and the contract in evidence in regard to payment to the Welfare Fund, by its express terms, only relates to producing companies.

The defendant renews its objection to the proposed in-

terrogatories to be answered by the Jury on the same grounds and for the same reasons heretofore given.

The Court erred in its refusal to give Defendant's requested Instructions numbered 4, 5, 6 and 7.

The defendant renews its objection to the failure of the Court to give these Instructions on the same grounds and for the same reasons heretofore given to the Court.